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THE PRESENT STREET RAILWAY SITUATION IN CHICAGO

The street railway mileage of Chicago is greater than that of any other municipality. Exclusive of interurban lines it now has more than nine hundred miles of single track. The several railways were constructed by many independent companies, but, save some suburban lines, are now practically all owned or controlled by two corporations, viz. the Chicago City Railway Company and the Chicago Union Traction Company. These two companies have almost complete control of the lines entering the heart of the city, the one those on the south side, the other those on the north and west sides. The former of these controls practically all the railway mileage on the south side save the suburban lines which are operated by a number of independent companies. The West Chicago Street Railroad Company, with its two underlying companies, the Chicago West Division Railway Company and the Chicago Passenger Railway Company, controls the lines on the west side entering the business district. On the north side is the North Chicago Street Railroad Company and its underlying company, the North Chicago City Railway Company. The West Chicago and the North Chicago Street Railroad companies together with the Consolidated Traction Company, organized in 1899 to take over a number of branch lines acting as feeders for these, are the underlying companies of the Chicago Union Traction Company. Though the three systems are now owned and controlled by the Union Traction Company, so far as fares are concerned they have been operated independently. A five-cent fare is collected and in some instances transfers have not been given from one line to another operated by the same underlying company in spite of stipulations contained in the franchise grants.

This situation has recently given rise to a great deal of dissatisfaction and to considerable trouble. The city council by ordinance has required the issue of transfers good for continuous passage upon all lines owned and operated by a street railway corporation. This the Union Traction Company refused to do until recently, when active measures were taken to enforce the ordinance. Several hundred suits have been instituted against it for refusing to issue transfers when demanded, with the result that a second fare is not col-

lected, pending the decision of the courts on the legality of the ordinance.

But the payment of two fares to go from one "side" of the city to the other, to reach the business district from the outlying sections of the city on the west and north sides, or in many cases to go a short distance on cross-town lines, is but one of the evils of the present situation. For some years, pending franchise renewals, both the Chicago City Railway Company and the Chicago Union Traction Company have permitted their equipment to deteriorate, the number of cars run is inadequate and the running of cable cars in trains instead of singly makes long waits necessary.

Of the seven hundred miles of single track operated by the Chicago City Railway and the Chicago Union Traction companies, eighty-two miles are operated by cable, ten by horse power, and the remainder by overhead trolley. The underground trolley has been given but one trial, and then, as probably intended by the financier who gave it, it proved to be a failure. In the business district most of the lines are operated by cable. The use of the overhead trolley is forbidden, so it is necessary to draw the electric cars by horses or to carry them on the cable lines as trailers. The terminals in the business district give rise to great congestion of traffic. The cables are already over-taxed and their capacity is not sufficient to operate as many cars as are necessary for good service. Recently an effort was made to secure temporary relief by permitting the use of the overhead trolley, but it came to naught because of the inability of the Mayor and the officers of the railway companies to agree on the routes to be used. With an inadequate number of cars, with the long cable trains often carrying electric cars as trailers, with the terminals in the business district of the city, with no transfers from one side of the city to another and unsatisfactory transfer privileges from one line to another owned by the Union Traction Company, there is no other large city in the United States with a street railway service so poor and so inadequate as that of Chicago.

The franchises of the important "trunk lines" operated by the two corporations mentioned above are generally supposed to expire in 1903. In the renewal of these franchises on such terms as will be fair to all and as will secure good transportation service for the public the city council must find a solution for what is perhaps the

most important and most perplexing franchise problem yet considered by an American municipal legislative body.

The first horse railways in Chicago were constructed in the late fifties. Though the duration of the franchises for some of these roads was not specified, it was usually fixed at twenty-five years. By 1865 what are now some of the most important trunk lines had been constructed. In that year the general assembly changed the periods for which all the local railway franchises had been granted to ninety-nine years. This was done in spite of a very hostile public opinion and over the veto of the governor. The measure was not submitted for the approval of the city council or the electors. The feeling aroused was so intense that in the constitution of 1870 a clause was inserted depriving the general assembly of the power to grant franchises for street railways without the approval of the municipal legislative body. In 1874 the legislature passed the "Horse and Dummy Act," limiting franchises to be granted to twenty years. Since that time all street railway franchises in Chicago have been granted for that or for a shorter period.

In 1883 the period for which the city council had granted the franchises for some of the earlier roads expired. The validity of the ninety-nine-year act was then questioned. The matter was taken to the courts but never reached final decision. The corporation counsel gave it as his opinion, and this opinion was concurred in by the city attorney, that the act was valid. The city administration and the corporations were both desirous of a compromise. Finally an agreement was arrived at whereby in return for an extension of all their franchises for twenty years from July 30, 1883, the street railway companies were to pay an annual license tax of \$50 per car together with half the amount become delinquent since 1878 when the ordinance levying the tax had been passed. The contest over the ninety-nine-year act ceased and it was expressly stipulated in the agreement entered into that the merits of the case should not be involved. Some of the franchises granted since 1883 have been timed so that they will expire in 1903 or soon thereafter. Thus it happens that most of the franchises for the more important street railways, perhaps, will expire in 1903, though some do not expire till as late as 1916.

As will be seen later, for some years the most valuable asset of the larger street railway corporations has been their franchises. To secure this asset against depreciation as the franchises neared expira-

tion and to enable them to borrow money to convert the cable roads into electric lines and otherwise to improve their property, these corporations, in 1897, attempted to secure legislation very favorable to their interests. Bills were introduced in the general assembly and supported by them, creating a state commission upon which most of the powers of the local government, in so far as they relate to street railways, should devolve, extending the franchises for fifty years from 1897 and retaining a five-cent fare with a payment of a small tax of 3 per cent of gross receipts. The opposition aroused was so intense, however, that these "Humphrey bills" were defeated. But their essential provisions, save the one creating a state commission, were later embodied in a measure which was passed and became familiarly known as the "Allen law." This law was very similar to the notorious one passed by the legislature of Ohio in 1896, and was based on it. But this enabling legislation availed the corporations nothing. The mayor and the majority of every city council since that time have been pledged to defeat all such measures. At the next general election most of the members of the general assembly who had voted for the odious measure failed to be returned, and the next session witnessed its repeal without a dissenting vote. Since that time the attitude of the local government has been so decidedly opposed to granting any favors to the "traction interests" that none has been asked. Only recently have the Chicago City Railway and Union Traction companies expressed a willingness to confer with the council in regard to franchise renewals. All efforts to secure their co-operation in the matter were without avail till the council resolved that if by the fifteenth of June, they did not express a willingness to confer with it, they would be shown no preference in franchise legislation and that offers from outside capitalists should be advertised for. This resolution resulted in promises of the co-operation desired, though the president of the Union Traction Company in his letter to the council serves notice that, preliminary to arriving at an agreement as to the terms on which franchise renewals should be made, under no circumstances will any rights possessed under the ninety-nine-year act be waived. Some months ago some stockholders of this company appealed to the United States Courts and asked that an injunction be issued restraining the city council from declaring its franchises forfeited. The Court has recently refused to issue the injunction for reasons not involving

an opinion on the validity of the act referred to. For the present the "traction interests" have failed to secure a decision of such a nature as to put them in a position to secure a favorable compromise from the city. Nevertheless it is probable that the rights possessed by the traction companies under this act will have much to do with the final solution of the franchise problem. This fact warrants further consideration of the controversy as to its legality.

Under this act the street railway corporations claim that the franchises for lines constructed or for which authority to construct had been secured before it went into effect, do not expire till 1957. Indeed the claim has been made that the act applies to some extensions made more recently. While the merits of the case have not been entered into sufficiently to satisfy the recent Street Railway Commission which desired further investigation of the subject, the representatives of the city at two different times have given the matter consideration.

Of the forty-two franchises granted prior to the passing of the so-called ninety-nine-year act of February 6, 1865, four provided for the right of city purchase of the lines constructed upon the expiration of the twenty-five year periods for which they were granted. In 1883 it was asserted that the ninety-nine-year act was null and void because it deprived the city of this valuable property right. On the other hand, it was asserted that the city council could not make a valid agreement with a corporation providing for municipal ownership without explicit authorization by the general assembly, and such authorization had not been granted. For this and for other reasons which need not concern us now Corporation Counsel Adams gave it as his opinion that the ordinance in so far as it related to municipal ownership of street railways was not valid, and that the ninety-nine-year act did not deprive the city of any property right, and was therefore legal.

This act was discussed at some length by the Chicago Street Railway Commission in its report made in 1898. This "Harlan Commission," so called, was appointed by the city council to investigate and report on the franchises under which the several street railway companies operated their lines, the operations, liabilities and profits of these corporations, and the scale of wages and conditions of employment as found.

In so far as relates to rights possessed under the ninety-nine-

year act the commission took a very roseate view of the situation. It was not sure but that the city had power to purchase railways as a matter of public policy without specific enabling legislation. And, whether or not the city had power in 1865 to acquire such property, it might have secured enabling legislation at any time before the expiration of the franchises in 1883. In any case, whether the city's right was an absolute or only a dependent one it was a right of value, and the commission was of the opinion that the ninety-nine-year act was null and void because it was an infringement of it. In the other cases where no provision for city purchase was made, it was of the opinion that the right to alter the terms of the franchises at any time when their duration was not fixed or at the end of the period stipulated, was a right of great value, and that for the reason given above, the law was here also null and void. Furthermore, the early ordinances provided for "horse traction" only, and the commission held that even if the ninety-nine-year act was legal, it authorized operation of cars by horse power only and is, therefore, at present when practically all lines are equipped for cable or electric traction, quite worthless. This depends, of course, on what the city has done in authorizing the use of some other form of traction. During the eighties cable power was introduced and during the nineties most of the roads still operated as horse railways were gradually converted into overhead electric lines. But the commission finds upon investigating the ordinances authorizing these changes that "some of the permits are already subject to revocation by the city at will, and the balance will, on or before July 30, 1903 (or possibly in the case of two or three lines on the South side, on July 16, 1904) expire or become subject to such revocation by the city."

Thus, according to the "Harlan Commission," the ninety-nine-year act cannot complicate the situation in 1903. But it is doubtful if some of the opinions noted above are in harmony with the laws of Illinois as interpreted by the courts. It is possible and even probable that most of the claims made by the traction companies will be upheld when the situation becomes such that the courts will pass on their validity. In at least one instance (*People ex rel. Storey v. Chicago City Railway Company*, 73 Ill. 544) a case has been decided by the Supreme Court of Illinois in accordance with the provisions of a section of the act of February 6, 1865, but as the constitutionality of that act was not contested it throws little or no light on what

the view of that body would be. As has been pointed out by an anonymous writer in the *Economist* in a series of papers on "Rights Under the Ninety-Nine-Year Act" (January 11, 1902, et seq.) if the courts should uphold the claims of the traction companies they could operate their systems in a badly crippled manner without franchise renewals and could make it almost impossible for any other company to operate within the business district. Such a decision would place the street railway companies in an advantageous position for bargaining with the city council.

When we turn to the "financial operations, liabilities and profits" of the street railway companies we find an interesting story. On these points the "Harlan Commission" made a valuable report. But because of the refusal of the officials of these companies to assist with the investigation in any way, the information secured was in some respects incomplete and of uncertain value. But more recently the Civic Federation has been able to secure much of the information desired by the public.

In 1899 Mr. Yerkes offered the Civic Federation the privilege of examining the books of the corporations which he controlled. The offer was accepted and an accountant employed to make the examination under the supervision of a committee of the Federation. Later a similar offer was made by the President of the Chicago City Railway Company, and likewise accepted. As a result we have the unique report edited by Dr. Maltbie and published in *Municipal Affairs*, June, 1901. In that number will be found the report made by the accountant, together with Dr. Maltbie's careful analysis of the same.

The investigation was of the Chicago City Railway Company and five of the six companies now underlying and controlled by the Union Traction Company, viz., the North Chicago City Railway Company, the North Chicago Street Railroad Company, the Chicago Passenger Railway Company, the Chicago West Division Railway Company and the West Chicago Street Railway Company. On July 1, 1901, these seven corporations (including the Union Traction Company) had some five hundred and fifteen miles of single track. At that time the face value of their liabilities was \$117,814,-289.73. The market value of these liabilities, excluding those stocks and bonds of the underlying companies held by the Union Traction Company, was \$120,235,537.73. The total cost of all the assets

other than the franchises, including the evidences of debt of one corporation held by another, was \$56,013,500.48. The estimated present value of these assets is \$45,841,488.76. The actual cost of the plants owned by these seven corporations was \$33,610,067.77. The present value of these plants is estimated at \$24,600,000. Consequently the water in the evidences of debt is \$61,800,789.25 if measured by the difference between the original cost of assets as given above and the face value of present liabilities. If measured by the difference between the present value of these assets and the face value of the liabilities, the amount of water is \$71,972,800.97. If the present value of the franchises is measured by the difference between present value of all other assets and the market value of the liabilities, it is found to be \$74,394,048.97. To the city the franchises are worth much more than this for the market value of the stocks and bonds is now low because of the short time some of the franchises have to run.

The water in the stock has come about through (1) failure to write off an adequate amount for depreciation, (2) the payment of dividends in stock, and (3) the giving of large bonuses to stockholders. None of the companies has written off an adequate amount for depreciation. The Chicago City Railway Company has made one dividend of stock amounting to \$250,000. Since 1881 it has issued all stock to stockholders at par when it has sold as high as 277 immediately after being issued. The other companies have also made stock dividends, issued valuable stock to stockholders at par, and paid construction companies, organized by large stockholders, exorbitant prices for construction and conversion of lines.

The Chicago City Railway Company declared a 10 per cent dividend in 1882, and has paid an annual dividend of 12 per cent since that time—and in 1893 it was double that amount. Adding these, the extra dividends and the premiums on stock and bond issues, the total dividends paid between January 1, 1882, and January 1, 1898, were \$37,602,187.50, or an average of 44.63 per cent per annum. Computing the dividends for the last three years in the same way they are found to be 26 3-4 per cent, 17 6-13 per cent, and 48 1-3 per cent respectively. The Union Traction Company, organized in 1899, has paid small dividends. This is explained, however, by the large dividends guaranteed on the stock of the underlying companies. The North Chicago City Railway Company was taken over by the North Chicago Street Railroad Company in 1886, with a guarantee

of dividends, bonuses, etc., which, taken together, amount to more than 40 per cent upon the capital stock of the old company. The North Chicago Street Railroad Company, from 1893 to 1897, paid dividends averaging 25.24 per cent per annum. In 1888 the Chicago Passenger Railway Company entered into an operating agreement with the West Chicago Street Railroad Company and was guaranteed 5 per cent dividends on its stock. The Chicago West Division Railway Company in 1887, had made a similar agreement. As in the other cases its indebtedness was assumed and it was guaranteed 35 per cent dividends on its stock. The West Chicago Street Railroad Company has paid dividends of from 5 to 9 per cent since it was organized in 1887.

It is not necessary to enter into details as to what compensation the street railway corporations could have afforded to pay for the privileges enjoyed by them. Suffice it to say, Dr. Maltbie finds that with the present traffic, were the water squeezed out of the debts of the seven corporations investigated, "they could pay 20 per cent of gross income to the city and still declare 6 per cent dividends while accumulating a depreciation fund of 4 per cent annually," or "fares could be reduced to four cents, and 6 per cent dividends and 4 per cent depreciation set aside." It must be added, however, that these conclusions must be very materially revised because of the burden of greatly increased taxes recently imposed on the traction companies. But squeezing all the water out would be a heroic measure when it is equal to all the capital stock and a part of the bonds. Possibly the city will be in position to do this in 1903. But what will probably be the policy of the city council in extending or otherwise disposing of the franchises?

In December, 1899, the council appointed a Street Railway Commission to outline the policy which the city should adopt in solving the street railway problem and to draft the necessary laws and ordinances for carrying out the same. This Commission has been continued from year to year in spite of the fact that there is little except of an educational nature it has been able to do and in spite of the opposition of the mayor. It has been made a regular council committee and at the present time, in addition to the functions performed by the special commission, attends to those matters of local transportation formerly referred to the committees on streets and alleys of the three divisions of the city.

At the time of its creation it was made the duty of this Commission to consider the feasibility of municipal ownership, the kind of service desirable, and the conditions on which franchises should be renewed. Later it was directed to report on the rights of the traction companies under the act of February 6, 1865, and on the feasibility of a system of subways within the business district.

Without expert assistance the Commission, now the Committee on Local Transportation, has felt itself unable to pass on the merits of claims under the ninety-nine-year act, or to give more than a tentative opinion that a system of subways should be adopted. Until recently there was apparently little utility in investigating the matter of subways because of the depleted condition of the municipal treasury and of the seeming lack of interest in the matter among capitalists. The city's debt exceeds the limit set by the state constitution of 1870, and for years it has been difficult to meet necessary current expenses. But recently it has been proposed that the city should build a system of subways by assessing the cost partly to the owners of benefited property and partly to the city which could issue "judgment bonds" therefor, or from funds obtained from the sale of bonds secured by the subway only, and not by a pledge of the city's credit. Both methods are advanced as meeting the requirements of the state constitution. But it is very doubtful if either method would meet with the approval of the courts, and the security for the debt would be so unsatisfactory to investors that it would not be expedient to adopt either plan. Prominent local capitalists have recently asked for a franchise to construct a system of subways. They offer to sell the subway at the expiration of the fifteen-year franchise asked for, or at the expiration of any ten-year period thereafter, to the city at cost of construction plus 10 per cent. They agree to pay from 3 to 5 per cent of the gross earnings as compensation for the franchise and to pay all judgments for damages allowed for injuries sustained from the construction of the subways. The engineer recently employed as expert to investigate and report on all matters pertaining to the street railway situation, will report on the feasibility of subways, and the Committee on Local Transportation has planned to investigate those now in operation in New York and Boston. It is probable that within a few years subways will be constructed and all surface railway lines removed from the business district.

The Street Railway Commission and the Committee on Local Transportation have outlined their policy in regard to franchise renewals in a report made in December, 1900, and in "outlines of a street railway renewal ordinance" presented to the council December 16, 1901. The necessity of improved service is made emphatic. Some other form of traction must be substituted for the antiquated cable, the underground trolley should be used in the more central parts of the city, joint use of tracks must be made by independent companies in the business district and the subways must be used if constructed. Control of the details of service should be vested in a committee of the council or a new department of the city administration. This control should extend to the manner of operating cars, the kind of cars to be used, schedules, use of terminals, and such other matters as may require attention. A five-cent single fare and six tickets for a quarter, with a general system of transfers, is recommended. Because of the financial straits of the city, compensation in the form of a percentage of gross receipts is preferred, for several years at any rate, to a general reduction of fares. But compensation for franchises is a matter of secondary importance, and its amount should be decided after all details of service have been agreed on. In addition to the payment of a percentage of gross receipts, it is recommended that the street railway companies should continue to pave and sprinkle the part of the streets occupied by their tracks and should lower the tunnels under the river which now are seriously interfering with navigation. Annual reports should be made to the council, and the affairs of the street railway companies "should be open and known to the public to the same extent as if the business were managed by the public directly." Over-capitalization must be forbidden. Franchises should be limited to twenty years, the city retaining the right upon six months' notice to purchase the tangible property at any time after ten years, at its market value, plus 5 per cent for the enforced sale. All claims under the ninety-nine-year act must be waived upon the acceptance of a new franchise.

In order that the present service may not be continued longer than is necessary, the Commission has always recommended an early settlement of the franchise question, even at the sacrifice of an opportunity to secure municipal ownership. In its report, made in 1900, the Commission recommended that the city should "at the earliest

practicable time . . . acquire ownership of trackage and of whatever may form a part of the public street, without going to the extent of ownership and operation of rolling stock." But it has always regarded municipal ownership as a question of not pressing importance which the future could decide. A bill to serve as enabling legislation in franchise renewals was presented by it to the last general assembly, but for a number of reasons, some of which perhaps are best known to Chicago politicians, the measure was never reported from the committee to which it was referred. This bill provided for the possibility of municipal ownership, but when it failed to become law, the Commission recommended that franchises should be extended as soon as the necessary data were at hand and an agreement with the street railway companies could be arrived at, and that the question of municipal ownership should be left to be decided at some future time when the necessary enabling legislation could be secured from the general assembly.

Though the Committee on Local Transportation has received the support of the civic and other organizations among business men, its recommendations have met with considerable opposition. There has been some agitation, coming largely from the labor organizations, for a three-cent fare, but it has been quite eclipsed by the movement in favor of municipal ownership. The mayor regards himself as the apostle of municipal ownership, and it is from him that most of the opposition has come. Because of his right of veto and his strength as a party and popular leader, no settlement of the franchise problem can be made unless it meets with his approval. He has taken the position that no franchise renewals shall be made until the general assembly passes an enabling act making municipal ownership legally possible, and that then any franchise renewal ordinance must be referred to the electorate and receive its approval before being finally passed on by the city council. The council has placed itself on record as favoring this use of the referendum. The voters of the city, also, have placed themselves on record with regard to municipal ownership in such a manner as to cause general acquiescence in the mayor's policy of waiting in order that the possibility of securing municipal ownership may not be endangered.

At the aldermanic election held the first Tuesday in April of this year, the questions of municipal ownership of street railways and lighting plants, and of the direct primary were submitted to the

electorate and a large majority registered itself as favoring them all. Of the 213,859 voting in the aldermanic contests, 170,824 voted on the proposition for municipal ownership of street railways. Of these 142,826, or 84 per cent, voted in favor of such a policy. On the surface both the large vote and the large majority in favor of municipal ownership are surprising. But perhaps in voting for municipal ownership of street railways the 142,826 of a total of almost three times that many registered voters, did little more than record their dissatisfaction with the present situation and their will that the city council when renewing the franchises soon to expire shall serve the interests of the public, reserving adequate powers of control and the right of ownership when it may become possible and expedient. The city could not pay for the street railways out of current income or by incurring a larger debt if it were authorized to purchase them; some of the franchises held by the street railway companies will be of such value for some years that the city must wait for them to expire; and the city's civil service is as yet too inefficient to be charged with such a trust were the city legally and financially able to obtain control of them. Under the circumstances the proposition for "ownership by the city of Chicago of all street railways within the corporate limits of such city" appealed favorably to several classes of voters. No one was able to give accurate expression to his wishes. The proposition was approved by those who desire ownership with operation by lessees as well as by those who favor municipal ownership with operation by public employees. There were among those voting in the affirmative some enthusiasts who want municipal ownership at once or in the very near future; there were many who regard it as a solution to be applied at some indefinite time in the future; while finally there were those who wish the city to be in a position to acquire the street railway properties as a last resort when the policy of regulation shall have been definitely proved to be unsatisfactory. But all agree in serving notice on the general assembly, the city council and the street railway corporations that the inadequate transportation service, the inefficient management, the corruption and disregard of public interests, obtaining in the past must not continue in the future.

The franchise problem will not be settled till after the session of the general assembly to be held in 1903, when enabling legislation for franchise renewals will be sought. While such legislation was

refused by the last general assembly it should not be refused by the next. For some reason the incumbent of the mayor's chair in 1901 did nothing to secure the legislation desired by the council over which he presided as chairman. In 1903 he will have been elected for the fourth time as "rescuer of the public streets," and his efforts doubtless will be directed to securing the desired legislation. With all parts of the city administration working as a unit, with the officers of the street railway corporations made wiser by past experiences, and with the results of the recent municipal election before them, there seems to be no reason why even those sent to the legislature as representatives of candidates for the United States senatorship should hesitate to pass an acceptable franchise renewal bill to serve as enabling legislation.

But the franchise problem is far from a settlement. The recommendations of the Committee on Local Transportation are tentative. An expert engineer has been appointed to investigate and report on all details relating to the present service and the conditions on which franchises should be extended, and as he is exceptionally well fitted for the task, his recommendations should have great weight. When his report is made next September the city council will begin in earnest the double-handed fight against those who want the impossible on the one hand and against the corporations which have so much to make or to lose on the other. If the demands made are too urgent the corporations will doubtless make the most of any rights they may be found to have under the ninety-nine-year act of February 6, 1865. The outcome of the bargain finally made is very uncertain. However, if the situation is not complicated by rights under the ninety-nine-year act, some of its features can be forecasted with a fair degree of certainty. The situation is such that franchise extensions must be awarded to the corporations now in possession of the streets. The period for which they will be extended will be short and the right of purchase after a comparatively short term of years will be reserved. Good service will be required, and the right of control reserved will be greater than that ever exercised with authority by Chicago over private corporations. With the great expenditures involved in improving the service, and the short period for which franchises will be granted, large payments of gross receipts as compensation or a considerable reduction of fares cannot be expected.

H. A. MILLIS.